

Application No. 10/806,706

## **REMARKS**

### **Introduction**

The present application includes claims 1-40, wherein claims 1, 10, 26, and 35 are presented in independent form. Reconsideration and reversal of the rejections presented in the Office Action dated October 25, 2004 is respectfully requested in light of the following.

Applicants acknowledge with appreciation the Examiner's indication that claims 5, 12, 15, 23, 24, and 36 would be allowable if rewritten in independent form. As such, claims 1-40 are currently pending in this application.

Applicants do not acquiesce in the Examiner's rejections, but instead have elected to make the following arguments in an effort to expedite prosecution of this application leading to issuance of a patent. Reconsideration of the application in view of the following remarks is earnestly solicited.

### **Claim Rejections**

Claims 1, 4, 8-11, 16-22, 25-35, 37, 38 and 40 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,369,828 to Graebe (hereinafter "Graebe") in view of U.S. Patent No. 6,269,504 to Romano et al. (hereinafter "Romano"). Claims 1-4, 6-11, 13, 14, 16-22, 25-35 and 40 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,794,288 to Soltani et al. (hereinafter "Soltani") in view of Romano. Claim 39 was rejected under 35 U.S.C. 103(a) as being unpatentable over Graebe in view of Romano and further in view of Soltani.

#### **35 U.S.C. § 103(a)**

Pursuant to 35 U.S.C. § 103(c), Applicants respectfully submit that Romano is disqualified as prior art for obviousness rejections under 35 U.S.C. § 103 due to common ownership of Romano and the claimed invention at the time the claimed invention was made. Romano qualifies as prior art only under 35 U.S.C. § 102(e). See 35 U.S.C. § 103(c) and MPEP § 706.02(I). Applicants direct the Examiner's kind attention to the section of this Response entitled "Evidence of Common Ownership" provided on page 7.

Accordingly, applicants respectfully submit that the rejection of claims 1-4, 6-11, 13, 14, 16-22, 25-35, and 37-40 is obviated and that these claims are in condition for allowance.

### **Final Remarks**

In view of the foregoing amendments and remarks, Applicants submit that the application is now in condition for allowance. A Notice of Allowance is earnestly solicited.

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If necessary, Applicants request that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

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**EVIDENCE OF COMMON OWNERSHIP**

The above-identified application and U.S. Patent No. 6,269,504 to Romano et al. (hereinafter "Romano"), cited and applied by the Examiner, were, at the time the claimed invention of the above-identified application was made, commonly owned. Romano qualifies as prior art only under 35 U.S.C. § 102(e). Romano was applied in all of the Examiner's rejections, all of which were rejections under 35 U.S.C. § 103(a).

Romano was originally assigned to Hill-Rom, Inc. by the inventors who had a duty to assign Romano to Hill-Rom, Inc. The above-identified application was assigned to Hill-Rom Services, Inc. by the inventors who had a duty to assign the above-identified application to Hill-Rom Services, Inc. Hill-Rom Services, Inc. is a wholly-owned subsidiary of Hill-Rom, Inc. through a chain of intermediate subsidiaries. As such, both the claimed invention of the above-identified application and Romano were commonly owned, at the time the claimed invention of the above-identified application was made, by Hill-Rom, Inc. either directly or through a wholly-owned subsidiary of Hill-Rom, Inc.